

United Telephone Co. of NJ

A42301

In addition the two contracts which provide for Fujitsu and Avaya ISDN equipment are also extended until October 31, 2005. These contracts are as follows:

Extel Communication

A45532

Elle Communication Group

A45533



## State of New Jersey

DEPARTMENT OF THE TREASURY  
DIVISION OF PURCHASE AND PROPERTY  
PURCHASE BUREAU  
P.O. Box 230  
TRENTON, NEW JERSEY 08625-0230

RICHARD J. CODEY  
Acting Governor

JOHN E. MCCORMAC, CPA  
State Treasurer

### ADDENDUM #37 T-1316

SOLICITATION #27573

**DATE:** October 31, 2005

**TO:** All Using Agencies and  
Cooperative Purchasing  
Participants

**FROM:** Toni Laudati, Purchase Bureau

**SUBJECT:** Telecommunications Equipment - Wired

**CONTRACT PERIOD:** February 1, 2000 to January 31, 2001

1st Extended Period: February 1, 2000 to January 31, 2002  
2nd Extended Period: February 1, 2002 to May 31, 2002  
3rd Extended Period: June 1, 2002 to May 31, 2003  
4th Extended Period: June 1, 2003 to February 29, 2004  
5th Extended Period: March 1, 2004 to August 31, 2004  
6th Extended Period: September 1, 2004 to February 28, 2005  
7th Extended Period: March 1, 2005 to June 30, 2005  
8th Extended Period: July 1, 2005 to October 31, 2005  
9th Extended Period: November 1, 2005 to April 30, 2006

The contract for Telecommunications Equipment - Wired has been extended for a period of six months.  
The next contract expiration date is April 30, 2006.

The vendors listed below have agreed to extend as per the terms and conditions of the original bid/

Altura Communication Systems	A42294
Asset Recover Communication	A42290
Avaya Inc.	A42285
Avcomm Technologies LLC	A42297
CES Corporation	A42288
Extel Communication Inc.	A42291
Johnston Communications	A42287
KML Technologies	A42302
Mitel Networks Inc.	A42300, A42333
Network Cabling Inc.	A42299
Nextiraone LLC	A42296

RFP Solutions Inc.	A42293
Shared Technologies Fairchild	A42117
Siemens Information & Comm. Networks	A42289
Teledata Systems Corporation	A42303
Teloquent Communication Corp.	A42576
United Telephone Co. of NJ	A42301

In addition the two contracts which provide for Fujitsu and Avaya ISDN equipment are also extended until April 30, 2006. These contracts are as follows:

Extel Communication	A45532
Elle Communication Group	A45533



## State of New Jersey

DEPARTMENT OF THE TREASURY  
DIVISION OF PURCHASE AND PROPERTY  
PURCHASE BUREAU  
P.O. BOX 230  
TRENTON, NEW JERSEY 08625-0230

JON S. CORZINE  
*Governor*

BRADLEY I. ABELow  
*State Treasurer*

### Amendment #40 T-1316

SOLICITATION #27573

**DATE:** April 26, 2006

**TO:** All Using Agencies and  
Cooperative Purchasing  
Participants

**FROM:** Toni Laudati, Purchase Bureau

**SUBJECT:** Telecommunications Equipment - Wired

**CONTRACT PERIOD:** February 1, 2000 to January 31, 2001

1st Extended Period: February 1, 2000 to January 31, 2002  
2<sup>nd</sup> Extended Period: February 1, 2002 to May 31, 2002  
3<sup>rd</sup> Extended Period: June 1, 2002 to May 31, 2003  
4th Extended Period: June 1, 2003 to February 29, 2004  
5<sup>th</sup> Extended Period: March 1, 2004 to August 31, 2004  
6<sup>th</sup> Extended Period: September 1, 2004 to February 28, 2005  
7<sup>th</sup> Extended Period: March 1, 2005 to June 30, 2005  
8<sup>th</sup> Extended Period: July 1, 2005 to October 31, 2005  
9<sup>th</sup> Extended Period: November 1, 2005 to April 30, 2006  
10<sup>th</sup> Extended Period: May 1, 2006 to October 31, 2006

The contract for Telecommunications Equipment - Wired has been extended for a period of six months.  
The next contract expiration date is October 31, 2006.

The vendors listed below have agreed to extend as per the terms and conditions of the original bid/

Altura Communication Systems	A42294
Asset Recover Communication	A42290
Avaya Inc.	A42285
AV Business Communications System LLC	A42297
CES Corporation	A42288
Extel Communication Inc.	A42291
Johnston Communications	A42287
KML Technologies	A42302
Mitel Networks Inc.	A42300, A42333
NEC United Solutions	A64067

# EXHIBIT I

**State of New Jersey**

DEPARTMENT OF THE TREASURY  
DIVISION OF PURCHASE AND PROPERTY  
PURCHASE BUREAU  
P.O. Box 230  
TRENTON, NEW JERSEY 08625-0230

RICHARD J. CODEY  
Acting Governor

JOHN B. MCCORMAC, CPA  
State Treasurer

January 18, 2005

Mike McAndrews  
Avaya, Inc.  
533 Fellowship Drive  
Mt. Laurel, NJ 08054

Ref: Telecommunication Equipment - Wired  
Contract No. 42285

Dear Sir/Madam:

As you are aware, your firm is the holder of the referenced contract which the State is considering extending for an additional period of four months. The contemplated extension will commence on March 1, 2005 and terminate on June 30, 2005. At any time during the extension period, the State may terminate the contract with not less than thirty (30) days written notice. The extension would be in accordance with the prices, terms and conditions of your current contract.

In addition to the current contract terms and conditions, this letter is to advise you that on September 22, 2004, Governor James E. McGreevey signed Executive Order 134 ("E.O. 134"), which, among other things, imposes new restrictions on the ability of State departments, agencies and authorities to award contracts exceeding \$17,500 to vendors who make certain political contributions on and after October 15, 2004, in order to ensure that the public can have confidence that the selection of State contractors is based on merit and not on the political contributions made by such contractors. E.O. 134 also requires the disclosure of all contributions to any political organization organized under 26 U.S.C. 527 that also meets the definition of a "continuing political committee" within the meaning of N.J.S.A. 19:44A-3(n) and N.J.A.C. 19:25-1.7. E.O. 134 will apply to contracts which are extended beyond the original term contemplated by the contract.

Specifically, the Order bans the award of a contract, for all contracts awarded on and after October 15, 2004, to a business entity that has solicited or made any contribution of money, pledge of contribution, including in-kind contributions,\* under the following conditions:

- a) Within the 18 months (starting October 15, 2004) immediately preceding the solicitation of this RFP, any contribution to:

\* "Contribution" means a contribution reportable by the recipient under the "New Jersey Campaign Contributions and Expenditures Reporting Act," N.J.S.A. 19:25-7.1 and N.J.S.A. 19:25-10.1 et seq. Currently, contributions in amount in excess of \$400 during a reporting period are deemed "reportable" under these laws. As of January 1, 2005, that threshold will be reduced to contributions in excess of \$300.

- (i) Any candidate committee and/or election fund of any candidate for or current holder of the public office of Governor; or
  - (ii) Any State or county political party committee;
- b) During the term of office of the current Governor, any contribution to:
- (i) Any candidate committee and/or election fund of the Governor; or
  - (ii) Any State or county political committee nominating such Governor in the election preceding the commencement of said Governor's term.
- c) Within the 18 months immediately preceding the last day of the term of the office of the Governor, any contribution to:
- (i) Any candidate committee and/or election fund of the Governor; or
  - (ii) Any State or County political party committee of the political party nominating such Governor in the last gubernatorial election preceding the election. In the event such a contribution is made, the business entity will be barred from receiving the award of a contract throughout the remaining term of the current Governor and the full term of the next Governor.

In order to receive a contract extension, a business entity is required to certify that no such contributions have been made and also agree to disclose on a continuing basis thereafter any such contributions when those contributions are made, all contributions to any 527 organization, as described above. The Disclosure Statements will be subject to review by the Treasurer or his designee to determine if the 527 contributions pose any conflict of interest, in which event, a decision will be made, on a case by case basis of whether the contract must be rescinded or may be allowed to proceed.

Accordingly, you are cautioned that proscribed contributions made on and after October 15, 2004 will not only preclude a business entity from receiving a contract award pursuant to the referenced RFP but may also preclude award of contracts pursuant to future bidding opportunities.

Because the contract extension will take effect on or after October 15, 2004, attached to this letter are the Executive Order 134 Certification form (Attachment #1) and Disclosure of Political Contributions form (Attachment #2) that must be signed and returned to the undersigned Purchase Bureau Buyer, within five (5) business days of the date of this letter, in order for your firm to be qualified to receive the contract extension. Please note that a separate Certification is required for each person or organization defined as a "Business Entity" as set forth in the Certification. Also enclosed is the Continuing Disclosure of Political Contributions form (Attachment #3) that must be submitted at the time any contribution subject to disclosure is made, during the term of the contract.

In addition, also attached is an Ownership Disclosure Form which also has to be completed and submitted to the Purchase Bureau.

The full text of the Executive Order may be accessed at [http://www.state.nj.us/cgi-bin/governor/njnewsline/view\\_article.pl?id=2151](http://www.state.nj.us/cgi-bin/governor/njnewsline/view_article.pl?id=2151)

If you are interested in this extension under the terms stated above, please sign at the bottom of this letter and return it to the undersigned along with the Certification, Disclosure form and Ownership Disclosure forms by January 28, 2005. The correspondence may be faxed to 609-633-3634.

It is understood that this is not a formal extension notice, but merely a solicitation of your interest in an extension. If the State decides to extend this contract, you will receive a formal notice to this effect and a new contract document.

Sincerely yours,



Antoinette Laudati  
Purchase Bureau

ATTACHMENT 1 - EXECUTIVE ORDER 134 CERTIFICATION  
ATTACHMENT 2 - DISCLOSURE OF POLITICAL CONTRIBUTIONS  
ATTACHMENT 3 - CONTINUING DISCLOSURE OF POLITICAL CONTRIBUTIONS  
ATTACHMENT 4 - OWNERSHIP DISCLOSURE FORM

Should the State decide to extend this contract, I agree to the extension in accordance with the terms of the current contract:

Michael McQuinn 2/21/05

Name of Authorized Signature

Date

(OR)

I do not agree to the extension in accordance with the terms outlined above.

Name of Authorized Signature

Date



**State of New Jersey**

DEPARTMENT OF THE TREASURY  
DIVISION OF PURCHASE AND PROPERTY  
PURCHASE BUREAU  
P.O. Box 230  
TRENTON, NEW JERSEY 08625-0230

JOHN E. MCCORMAC, CPA  
State Treasurer

RICHARD J. CODEY  
Acting Governor

May 12, 2005

AVAYA INC  
SUITE 201 533 FELLOWSHIP DR  
MT. LAUREL NJ 08054  
MIKE MCANDREWS

Re: Telecommunication Equipment - Wired  
Contract No. 42285

Dear Mr. McAndrews:

The State of New Jersey is considering extending your contract to provide telecommunication equipment to the State of New Jersey.

The contemplated extension will be for a period of four months commencing on July 1, 2005 and terminating on October 31, 2005. At any time during the extension period, the State may terminate the contract with not less than 30 days written notice.

The extension would be in accordance with the same price, terms and conditions of your current contract. If you are interested in this extension on these terms, please sign at the bottom of this letter and return it to the undersigned by May 27, 2005. This correspondence may be faxed to (609) 633-3634.

It is understood that this is not a formal extension notice, but merely a solicitation of your interest in an extension. If the State decides to extend this contract, you will receive a formal notice to this effect and a new contract document.

Sincerely,

*Toni Laudati*  
Toni Laudati  
Purchase Bureau

☒ I agree to the extension in accordance with the terms outlined above.

☐ I do not agree to the extension in accordance with the terms outlined above.

*Michael McAndrews*  
Authorized Signature

Date

*5/31/05*

**State of New Jersey**

DEPARTMENT OF THE TREASURY

DIVISION OF PURCHASE AND PROPERTY

PURCHASE BUREAU

P.O. BOX 230

TRENTON, NEW JERSEY 08625-0230

RICHARD J. CODEY  
Acting GovernorJOHN E. MCCORMAC, CPA  
State Treasurer

September 14, 2005

Mr. Mike McAndrews  
Avaya Inc.  
533 Fellowship Dr.  
Suite 201  
Mt. Laurel, NJ 08054Re: Telecommunication Equipment - Wired  
Contract No. A-42285, T1316

Dear Mr. McAndrews:

The State of New Jersey is considering extending your contract to provide telecommunication equipment to the State of New Jersey. Please disregard previous letter dated September 9, 2005.

The contemplated extension will be for a period of six (6) months commencing on November 1, 2005, and terminating on April 30, 2006. At any time during the extension period, the State may terminate the contract with not less than 30 days written notice.

The extension would be in accordance with the same price, terms and conditions of your current contract. If you are interested in this extension on these terms, please sign at the bottom of this letter and return it to the undersigned by October 5, 2005. This correspondence may be faxed to (609) 633-3634.

It is understood that this is not a formal extension notice, but merely a solicitation of your interest in an extension. If the State decides to extend this contract, you will receive a formal notice to this effect and a new contract document.

Sincerely,

Toni Laudati  
Purchase Bureau☒ I agree to the extension in accordance with the terms outlined above.☐ I do not agree to the extension in accordance with the terms outlined above.

Authorized Signature

9/22/05

Date



## State of New Jersey

DEPARTMENT OF THE TREASURY  
DIVISION OF PURCHASE AND PROPERTYPurchase Bureau  
P.O. Box 214

TRENTON, NEW JERSEY 08625-0214

March 14, 2006

JOHN S. COLEMAN  
GovernorBRADLEY L. ARSELOW  
Acting State TreasurerMike McAndrews  
Averett Inc.  
933 Fellowship Dr. Suite 201  
Mt. Laurel NJ 08054Re: Telecommunication Equipment - Wired  
Contract No. 42285

Dear Mr. McAndrews:

The State of New Jersey is considering extending your contract to provide telecommunication equipment to agencies of the State of New Jersey.

The contemplated extension will be for a period of six months commencing on May 1, 2006 and ending on October 31, 2006. At any time during the extension period, the State may terminate the contract with not less than 30 days written notice.

The contemplated extension would be in accordance with the prices, terms and conditions of your current contract. If you are interested in this extension on these terms, please sign at the bottom of this letter and return it to the undersigned by April 10, 2006. This correspondence may be faxed to (609) 633-0363.

It is understood that this is not a formal extension notice, but merely solicitation of your interest in an extension. If the State decides to extend this contract, you will receive a formal notice to this effect and a new contract document.

Sincerely,

*Tori Lonsati*Tori Lonsati  
Purchase Bureau☒

I agree to the extension in accordance with the terms outlined above.

☐

I do not agree to the extension in accordance with the terms outlined above.

*Michael McAndrews*

Authorized Signature

4/10/06

Date

# EXHIBIT J



# EXHIBIT K

FUNDING COMMITMENT REPORT  
Billed Entity Name: PATERSON SCHOOL DISTRICT  
BEN: 122871  
Funding Year: 2005

Form 471 Application Number: 463661  
Funding Request Number: 1305353  
Funding Status: As Yet Unfunded  
Category of Service: Internal Connections  
Form 470 Application Number: 909620000  
SPIN: 143004340  
Service Provider Name: Dell Marketing LP  
Contract Number: A81247  
Billing Account Number: N/A  
Service Start Date: 07/01/2005  
Contract Expiration Date: 06/30/2006  
Number of Months Recurring Service Provided in Funding Year: 12  
Annual Pre-discount Amount for Eligible Recurring Charges:  
Annual Pre-discount Amount for Eligible Non-recurring Charges:  
Pre-discount Amount:  
Discount Percentage Approved by the SLD:  
Funding Commitment Decision:

FCDL Date: 05/08/2006  
Wave Number: 040

Funding Request Number: 1305447  
Funding Status: Not Funded  
Category of Service: Basic Maintenance of Internal Connection  
Form 470 Application Number: 909620000  
SPIN: 143026279  
Service Provider Name: Cross Telecom Corporation  
Contract Number: A42285  
Billing Account Number: N/A  
Service Start Date: 07/01/2005  
Contract Expiration Date: 06/30/2006  
Number of Months Recurring Service Provided in Funding Year: 12  
Annual Pre-discount Amount for Eligible Recurring Charges: \$.00  
Annual Pre-discount Amount for Eligible Non-recurring Charges: \$571,309.19  
Pre-discount Amount: \$571,309.19  
Discount Percentage Approved by the SLD: N/A  
Funding Commitment Decision: \$0.00 - Contract Violation  
Funding Commitment Decision Explanation: No contract was in place when the Form 471 certification was filed.

FCDL Date: 05/08/2006  
Wave Number: 040

# EXHIBIT L



# SCHENCK, PRICE, SMITH & KING, LLP

## ATTORNEYS AT LAW

10 Washington Street  
Morristown, New Jersey 07963  
(973) 539-1000  
www.spsk.com

JAMES ERIC ANDREW

DIRECT LINE: (973) 540-7354  
INTERNET: JEA@SPSK.COM

TELECOPIER (973) 540-7300

NEW YORK OFFICE  
305 BROADWAY, SUITE 900  
NEW YORK, N.Y. 10007  
(212) 822-1456

Reply to:  
P.O. Box 905  
Morristown, New Jersey 07963-0905

July 7, 2006

### VIA ELECTRONIC FILING

Universal Service Administrative Company  
Letter of Appeal  
Schools and Libraries Program  
Box 125 – Correspondence Unit  
80 South Jefferson Road  
Whippany, New Jersey 07981

#### **Re: APPEAL OF FUNDING COMMITMENT REPORT**

Dated: May 8, 2006

PATERSON SCHOOL DISTRICT

Primary Contact Person: James Eric Andrews, Esq.

Primary Contact Information: jea@spsk.com

Alternative Contact Person: Ralph Barca

Alternative Contact Information: erbarca@paterson.k12.nj.us

Funding Year 2005/2006

Service Provider Name: Cross Telecom Corporation

Spin: 143026279

Re: Form 471 Application Number: 463661

Category of Service: Basic Maintenance of Internal Connections

State Master Contract Number: A42285

Funding Request No.: 1305447

Applicant's Form Identifier: pps2005-2006

Billed Entity Number: 122871

Pre-Discount Amount: \$571,309.19

Funding Commitment Decision: \$0.00

Funding Commitment Decision Explanation: No contract was in place when the  
Form 471 certification was filed.

#### **TO WHOM IT MAY CONCERN:**

We are General Counsel to the State-Operated School District of the City of Paterson, State of New Jersey ("Paterson School District" or "District"). The Paterson School District hereby appeals the May 8, 2006 decision of the Universal Service Administration Company

Universal Service Administrative Company  
July 7, 2006  
Page 2

("USAC"), Schools and Libraries Division ("SLD") denying \$571,309.19 in funding for the provision of basic maintenance for internal telecom connections. In its Funding Commitment Report, the SLD explains that it denied funding because "[n]o contract was in place when the Form 471 certification was filed" with the SLD. The District respectfully requests that the SLD reconsider its decision to deny funding.

The District is appealing the above-referenced decision because it is based on the mistaken belief that there was no contract in place on February 17, 2005, the date of the District's filing of its Form 471 certification. As will be shown, the District's reliance on an existing State Master Contract fulfills the signed contract requirement of 47 C.F.R. 54.504(c) and also proves that a contract was indeed in place at the time the District submitted its Form 471 to the SLD. This State Master Contract, originally bid-out under authority of the New Jersey Department of Treasury, Division of Purchase and Property (hereinafter "Division of Purchase and Property") remained effective throughout the 2005/2006 funding year.

## **BACKGROUND**

On December 20, 2004, the District posted its Form 470 for the purpose of obtaining maintenance services for its internal telecom connections. See first page of Form 470-Receipt Notification Letter attached hereto as Exhibit A. While the purpose of the posting was to receive multiple bids for the proposed work, no bids were received. Fortunately, the District was able to utilize the existing State Master Contract for basic maintenance services (T1316, Contract No. A42285) pursuant to New Jersey law. N.J.S.A. 18A:18A-10. Given the situation at the time, the District properly determined that use of the State Master Contract was the most cost-effective way in which to engage a service provider for the continued maintenance of its internal telecom connections.

After the 28 day waiting period, On February 15, 2005, Cross Telecom Corporation (hereinafter "Cross Telecom"),<sup>1</sup> an eligible state contract service provider, sent the District proposed pricing for a maintenance contract under the State Master Contract. See Exhibit C attached hereto. Thereafter, after determining that Cross Telecom's pricing was in conformance with the State Master Contract pricing, by letter incorrectly dated February 27, 2005, but actually

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<sup>1</sup> Cross Telecom is an authorized dealer for Avaya. Cross Telecom was added as a dealer via Addendum No. 24 to the State Master Contract attached hereto as Exhibit B.

Universal Service Administrative Company

July 7, 2006

Page 3

sent on February 17, 2005, the School District notified Cross Telecom that its offer was acceptable. See Exhibit D.<sup>2</sup>

On February 17, 2005, the School District signed and thereafter submitted Form 471, indicating therein that it would be utilizing the existing State Master Contract with a contract award date of January 17, 2005. See first page of Form 471 Receipt Acknowledgment Letter attached hereto as Exhibit E; see also Block 5 of Form 471, Attachment 21, attached hereto as Exhibit F.<sup>3</sup> At paragraph 8 of its October 20, 2005 response to the SLD's Program Integrity Assurance team, the District once again indicated that it was using State Master Contract #A42285 for FRN 1305447. See Exhibit G.

During the period in question, the State Master Contract was extended four times. Addenda to the contract were issued as follows:

Addendum #31 – March 1, 2005 through June 30, 2005

Addendum #33 – July 1, 2005 through October 31, 2005

Addendum #37 – November 1, 2005 through April 30, 2006

Addendum #40 – May 1, 2006 through October 31, 2006

These addenda confirm the continuing existence of the contract during the funding year. The District understands that the Division of Purchase and Property always notifies service providers before extending a State Master Contract. These letter notifications must be signed by the service provider evidencing its agreement to the extensions. See addenda and extension letter signed by Avaya's representative in connection with Addendum 37, which is attached hereto as Exhibit H.

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<sup>2</sup> Even though Cross Telecom is listed as the service provider under Spin # 143026279, Cross Telecom is just a re-seller of Avaya, Inc.'s services. Therefore, Avaya has actually provided the maintenance services. The District plans on submitting a Change of Spin Form to reflect this fact.

<sup>3</sup> Attachment 21 is dated January 20, 2004 even though it was submitted in 2005. This was an error. Despite the wrong date, attachment 21 otherwise sets forth accurate information relating to the District's 2005/2006 funding year Form 471 filing, including its reference to utilization of State Master Contract #42285.

Universal Service Administrative Company  
July 7, 2006  
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## **DISCUSSION**

47 C.F.R. 54.504(c) provides in pertinent part:

An eligible school, library, or consortium that includes an eligible school or library seeking to receive discounts for eligible services under this subpart, shall upon signing a contract for eligible services, submit a completed FCC Form 471 to the Administrator.

Step 4 of the USAC's contract guidance procedures provides the following:

If the applicant selects the state master contract as the most cost-effective alternative, the applicant is required to follow the applicable provisions of the state master contract, state contract law, and state and local procurement laws. The signed state master contract between the state and the service provider meets the FCC signed contract requirement.

[<http://www.usac.org/sl/applicants/step04/state-replacement-contracts.aspx>(Contract Guidance) emphasis supplied], See also, FCC Form 471 Instructions-2004 at 23

Therefore, as is clear from the above instructions, the existence of a State Master Contract utilized by the school district applicant fulfills the signed contract requirement of 47 C.F.R. 54.504(c). Given the obvious continuing existence and usage of a valid State Master Contract in New Jersey, it is not at all clear to the District why the SLD even questions the existence of a contract. The State Master Contract certainly existed at the time the District submitted its Form 471 Certification, as evidenced by the addenda attached hereto, and it is odd indeed to question the very existence of the State Master Contract when the State of New Jersey relies on its continued validity to engage telecom services for many of its state government operations.

We note that when a State Master Contract is publicly bid in New Jersey, proposals are solicited from bidders, and if the State's Division of Purchase and Property accepts a bid, notification is then sent to the bidder requesting the signature of the official representing the bidder as evidence of the bidders acceptance of the terms and conditions of the contract. While New Jersey State Master Contracts do not contain signatures on the last page of the contract in the traditional way, the vendor's signed acceptance together with the terms and conditions set forth in the State's proposal constitutes the written contract. If the State decides to extend the contract without public bidding, notification of the extension is sent by the Division of Purchase and Property to those service providers listed on the state contract. The extension letters state that an extension is being contemplated and that the service provider must sign and return the

Universal Service Administrative Company  
July 7, 2006  
Page 5

letter if it wishes to accept the extension and continue as an authorized service provider under the state contract. See Exhibit H

It is important to point out that the District followed all SLD instructions relating to Forms 470 and 471 as well as state procurement laws when it utilized the existing State Master Contract. As noted above, no bids were received from interested service providers after the District posted its Form 470. In February 2005, state contract A42285 (Telecommunications Equipment – wired) was in full force and effect with its expiration set for February 28, 2005. In New Jersey, the practice is that the state contract is periodically extended and the District understandably believed that future extensions, at least covering the funding year, would be forthcoming. As anticipated, the State Master Contract never expired and remained in place with the same terms and conditions for the entire 2005/2006 funding year.

Also, extension of the State Master Contract before and during the funding year does not mean that the State Master Contract was replaced with another State Master Contract. For this reason, the SLD's replacement contract procedures have no applicability to the facts herein. In this regard, the USAC's website provides two scenarios which it describes as follows;

**Scenario A – State master contract expiring before the funding year**

A state master contract may expire **BEFORE** the start of the funding year for an application. In this case, your state intends to select a service provider as part of a competitive bidding process to provide services under a new state master contract, but that process has not been completed and you are not yet sure who that service provider will be.

**Scenario B – State master contract expiring during the funding year**

A state master contract may expire **DURING** the funding year for which you are applying for discounts. In this second situation, the current service provider will provide services during part of the funding year under that state master contract, but your state intends to select a service provider as part of a competitive bidding process to provide services under a new state master contract during the remainder of the funding year. Again, that process has not been completed and you are not yet sure who the new service provider will be.

[<http://www.usac.org/sl/applicants/step04/state-replacement-contracts.aspx> (See, State Replacement Contracts) (emphasis supplied)]

It is significant that the New Jersey Division of Purchase and Property never selected "a service provider as part of a competitive bidding process to provide services under a new state master

Universal Service Administrative Company

July 7, 2006

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contract" either before commencement of or during the 2005/2006 funding year, and the District understood that it would not be necessary to pursue the additional requirements for a replacement State Master Contract even though the existing contract was set to expire on February 28, 2005.

The District's contract with Cross Telecom Corporation was under a valid state contract allowable under the federal rules and utilized by the District in conformance with New Jersey public contracting law during the Funding Year. As argued above, the District had complied with all of the requirements of the Form 471 when it was submitted and was not obligated to follow replacement contract procedures irrelevant and inapplicable under the current circumstances. Moreover, the project was performed in accordance with the terms of the contract which remained in full force and effect during the period that the work was done and during the 2005/2006 Funding Year. These facts alone should provide sufficient assurances that the work under the contract was completed in accordance with all SLD requirements.

#### CONCLUSION

The District respectfully requests that the SLD reconsider its decision and award funding in the amount of \$571,309.19 for basic maintenance of Internal Connections. The State Master Contract #A42285 was in existence at the time the District submitted its Form 471 to the SLD and remained in effect throughout the Funding Year. For the reasons set forth above, the signed contract requirement was met and use of the State Master Contract by the District was a valid exercise of its contracting authority under New Jersey public contracting law.

SCHENCK, PRICE, SMITH & KING, LLP

Universal Service Administrative Company

July 7, 2006

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Finally, it is important to say that the Paterson School District serves especially needy children, and a decision denying the within appeal would work a hardship against the District and run counter to the policies that gave rise to utilization of E-rate funding in the first place.

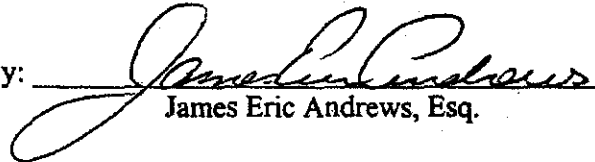
Respectfully submitted,

SCHENCK, PRICE, SMITH & KING, LLP

Attorneys for

THE STATE-OPERATED SCHOOL DISTRICT  
OF THE CITY OF PATERSON

By:

A handwritten signature in dark ink, appearing to read "James Eric Andrews", is written over a horizontal line.

James Eric Andrews, Esq.

Cc.: Dr. Michael E. Glascoe, Superintendent  
William J. Coughlin, Esq. Attorney for Cross Telecom Corporation

# SCHENCK, PRICE, SMITH & KING, LLP

## ATTORNEYS AT LAW

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Reply to:  
P.O. Box 905  
Morristown, New Jersey 07963-0905

August 2, 2006

### VIA ELECTRONIC FILING

Universal Service Administrative Company  
Letter of Appeal  
Schools and Libraries Program  
Box 125 – Correspondence Unit  
80 South Jefferson Road  
Whippany, New Jersey 07981

**Re: SUPPLEMENT TO APPEAL OF FUNDING COMMITMENT REPORT**

Dated: May 8, 2006

PATERSON SCHOOL DISTRICT

Primary Contact Person: James Eric Andrews, Esq.

Primary Contact Information: jea@spsk.com

Alternative Contact Person: Ralph Barca

Alternative Contact Information: erbarca@paterson.k12.nj.us

Funding Year 2005/2006

Service Provider Name: Cross Telecom Corporation

Spin: 143026279

Re: Form 471 Application Number: 463661

Category of Service: Basic Maintenance of Internal Connections

State Master Contract Number: A42285

Funding Request No.: 1305447

Applicant's Form Identifier: pps2005-2006

Billed Entity Number: 122871

Pre-Discount Amount: \$571,309.19

Funding Commitment Decision: \$0.00

Funding Commitment Decision Explanation: No contract was in place when the Form 471 certification was filed.



Universal Service Administrative Company  
August 2, 2006  
Page 2 of 2

**TO WHOM IT MAY CONCERN:**

We are General Counsel to the State-Operated School District of the City of Paterson, State of New Jersey ("Paterson School District" or "District"). By this letter, we are supplementing the District's appeal filed with the USAC/SLD on July 7, 2006 by attaching Exhibit I hereto. Please consider Exhibit I as additional documentation in support of the Paterson School District's appeal.

Exhibit I consists of four letters signed by Michael McAndrews, Avaya, Inc.'s representative. The letters show that Avaya, Inc. agreed to four extensions of State Master Contract #A42885 as shown by contract Addenda 31, 33, 37, and 40 (see Exhibit H attached to July 7, 2006 appeal). However, for various reasons, including the fact that the New Jersey Division of Purchase and Property was closed due to a flood in Trenton because of heavy rains, we were not able to get copies of all of the letters in time for inclusion with our appeal filed with the USAC on July 7, 2006. These letters provide additional support for the District's argument that State Master Contract #A42885 existed as a valid contract throughout the funding year.

Respectfully submitted,

SCHENCK, PRICE, SMITH & KING, LLP  
Attorneys for THE STATE-OPERATED  
SCHOOL DISTRICT OF THE CITY OF  
PATERSON

By: 

James Eric Andrews, Esq.

Enclosure

cc: Dr. Michael E. Glascoe, Superintendent  
William J. Coughlin, Esq. Attorney for Cross Telecom Corporation

# EXHIBIT M



Universal Service Administrative Company  
Schools & Libraries Division

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**Administrator's Decision on Appeal – Funding Year 2005-2006**

September 18, 2006

James Eric Andrews  
Schenck, Price, Smith & King, LLP  
P.O. Box 905  
Morristown, NJ 07963-0905

Re: Applicant Name: PATERSON SCHOOL DISTRICT  
Billed Entity Number: 122871  
Form 471 Application Number: 463661  
Funding Request Number(s): 1305447  
Your Correspondence Dated: July 07, 2006

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of USAC's Funding Year 2005 Funding Commitment Decision Letter for the Application Number indicated above. This letter explains the basis of USAC's decision. The date of this letter begins the 60 day time period for appealing this decision to the Federal Communications Commission (FCC). If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 1305447  
Decision on Appeal: Denied  
Explanation:

- Upon thorough review of the appeal letter and relevant documents, USAC has determined that, at the time you submitted your Form 471 application, you did not have a signed contract in place with your service provider. During the application review, the applicant was asked to provide copies of signed and dated contracts. On October 20, 2005, you stated that products and services for FRN 1305447 were procured from NJ state master contract number A42285 (Notice of Award T-1316). Our records show that, at the time of the Form 471 filing, this contract was extended until February 28, 2005. Subsequent extensions to the master contract did not occur until after the Form 471 filing. FCC Rules state that a contract must be signed and dated on or after the Allowable Contract Date as calculated by the Form 470 posting date, but prior to the submission of the Form

471. In this case, you have not demonstrated that you have complied with FCC Rules; therefore, the appeal is denied.

- SLD has determined that, at the time you submitted your Form 471 application, you did not have a signed contract for services in place with your service provider(s) for services other than tariffed or month-to-month services. FCC rules require that applicants submit a completed FCC Form 471 "upon signing a contract for eligible services." 47 C.F.R. § 54.504(c). The FCC has consistently upheld SLD's denial of Funding Request Number(s) when there is no contract in place for the funding requested.<sup>1</sup> The FCC Form 471 instructions under Block 5 clearly state that you MUST sign a contract for all services that you order on your Form 471 except tariffed services and month-to-month services.<sup>2</sup> You did not provide evidence with your appeal that, at the time you signed your Form 471, you had signed a contract for eligible services. Consequently, SLD denies your appeal.

If your appeal has been approved, but funding has been reduced or denied, you may appeal these decisions to either USAC or the FCC. For appeals that have been denied in full, partially approved, dismissed, or canceled, you may file an appeal with the FCC. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD section of the USAC website or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience and cooperation during the appeal process.

Schools and Libraries Division  
Universal Service Administrative Company

cc: Ralph Barca

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<sup>1</sup> *Request for Review by Waldwick School District, Schools and Libraries Universal Service Support Mechanism*, File No. SLD-256981, CC Docket Nos. 02-6, Order, 18 FCC Rcd. 22,994, DA 03-3526 (2003).

<sup>2</sup> See Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (October 2004) at page 20.

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## Detailed Results

**Tracking number** 858601635788  
**Signed for by** R.EDMONDS  
**Ship date** Nov 16, 2006  
**Delivery date** Nov 17, 2006 10:40 AM  
**Status** Delivered

**Reference** 19798-451  
**Delivered to** Shipping/Receiving  
**Service type** Standard Box  
**Weight** 6.0 lbs.

**Wrong Address?**  
Reduce future mistal  
FedEx Address Chec  
  
**Tracking a FedEx Sr  
Shipment?**  
Go to [shipper login](#)

Date/Time	Activity	Location	Details
Nov 17, 2006	10:40 AM <b>Delivered</b>		
	8:19 AM On FedEx vehicle for delivery	CROFTON, MD	
	8:13 AM At local FedEx facility	CROFTON, MD	
	6:07 AM Departed FedEx location	NEWARK, NJ	
	1:38 AM Arrived at FedEx location	NEWARK, NJ	
Nov 16, 2006	7:59 PM Left origin	MORRISTOWN, NJ	
	5:47 PM Picked up	MORRISTOWN, NJ	

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Language

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<input type="text"/>	English	<input type="checkbox"/>	<input type="checkbox"/>
<input type="text"/>	English	<input type="checkbox"/>	<input type="checkbox"/>
<input type="text"/>	English	<input type="checkbox"/>	<input type="checkbox"/>
<input type="text"/>	English	<input type="checkbox"/>	<input type="checkbox"/>

Select format: ☒ HTML ☐ Text ☐ Wireless

Add personal message:

Not available for Wireless or  
non-English characters.☐ By selecting this check box and the Submit button, I agree to these Terms and[Submit](#)

FedEx  
Tracking  
Number

8586 0163 5788

New  
ID No.

0215

## 1 From Please print and print here

Date 11/16/06 Sender's FedEx Account Number 0071-7210-9  
Sender's Name Eric Andrews Phone (973) 539-1000  
Company SCHENCK PRICE SMITH & KING LLP  
Address 10 WASHINGTON ST  
City MORRISTOWN State NJ ZIP 07960-7117

## 2 Your Internal Billing Reference

19798-451

## 3 To

Recipient's Name Office of the Secretary  
Company Federal Communications Commission  
Recipient's Address 9300 East Hampton Drive

## Address

City Capitol Heights State MD ZIP 20743  
0347003573

## 4a Express Package Service

☐ FedEx Priority Overnight  
Next business morning \*\* Friday  
shipments will be delivered on Monday  
unless SATURDAY Delivery is selected

☒ FedEx Standard Overnight  
Next business afternoon \*\*  
Saturday Delivery NOT available

☐ FedEx 2Day  
Second business day \*\* Thursday  
shipments will be delivered on Monday  
unless SATURDAY Delivery is selected

☐ FedEx Express Saver  
Third business day  
Saturday Delivery NOT available

## Packages up to 150 lbs.

☐ FedEx First Overnight  
Earliest next business morning  
primary to select locations \*\*  
Saturday Delivery NOT available

## 4b Express Freight Service

☐ FedEx 1Day Freight\*\*  
Next business day \*\* Friday  
shipments will be delivered on Monday  
unless SATURDAY Delivery is selected

☐ FedEx 2Day Freight  
Second business day \*\* Thursday  
shipments will be delivered on Monday  
unless SATURDAY Delivery is selected

## Packages over 150 lbs.

☐ FedEx 3Day Freight  
Third business day \*\*  
Saturday Delivery NOT available

## 5 Packaging

☐ FedEx Envelope\* ☐ FedEx Pak\*  
Includes FedEx Small Pak,  
FedEx Large Pak, and FedEx Sturdy Pak

☒ FedEx Box ☐ FedEx Tube  
\*Declared value limit \$500

## 6 Special Handling

☐ SATURDAY Delivery  
NOT Available in:  
FedEx Standard Overnight,  
FedEx First Overnight, FedEx Express  
Saver, or FedEx 2Day Freight

☐ HOLD Weekday  
at FedEx Location  
NOT Available in:  
FedEx Standard Overnight,  
FedEx First Overnight, FedEx Express  
Saver, or FedEx 2Day Freight

☐ HOLD Saturday  
at FedEx Location  
Available ONLY in:  
FedEx Priority Overnight and  
FedEx 2Day to select locations

## 7 Payment Bill to:

☒ Sender ☐ Recipient ☐ Third Party ☐ Credit Card ☐ Cash/Check

FedEx Acct No.

Card No.

Total Packages

Total Weight

Total Declared Value\*

FedEx Use Only

## 8 NEW Residential Delivery Signature Options

☐ No Signature Required  
Package may be left  
without obtaining a  
signature for delivery

☐ Direct Signature  
Anyone at recipient's  
address may sign for  
delivery

☐ Indirect Signature  
If no one is available at  
recipient's address, anyone  
at a neighboring address may  
sign for delivery

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